dum by acting, in matters purely legislative, by resolution instead of by bill. The latter is the consequence in the instant case if the argument of the learned Attorney General is to be sustained. But we are not put to the extremity of holding that the Legislature may not in matters of ratification act by resolution, for there is a high road of reason leading down to a true result.

"The contention that a resolution, although it may have the force and consequence of a formal legislative enactment, and affect the people in their civil and political rights, cannot be referred, arises from a misconception of the term. This case sounds in fundamentals, not in definitions. It is not the resolution, but the act of the Legislature in adopting it, that is to be referred. A resolution, like all acts of the Legislature, is to be measured by the end accomplished. It is true that we have no provision in our Constitution providing for the passage of resolution even in the formal matters in which the Legislature has throughout the entire history of our territory and state, been wont to act, but it is just as evident that there is no limitation upon the power of the Legislature to act by resolution.

"The Constitutions of some of the states and the Constitution of the United States (section 7, art. 1) permit or recognize the practice of acting by resolution, and some of them limit its uses. It has been held if the Constitution is silent, as ours is, that legislation cannot be effected by that method. Boyers *v.* Crane, 1 W. Va. 176; State ex rel. Attorney General *v.* Kinney, 56 Ohio St. 721, 47 N. E. 569; Barry *v.* Viall, 12 R. I. 18.

"And were we considering a matter involving private right, arising in or out of the laws of this state, we could not question the authorities just cited; but they are not applicable for the reason that the authority to act in the matter of a proposed amendment to the Constitution of the United States does not arise in or out of the Constitution of the state, but arises out of the federal Constitution, and any act, whether it be by resolution or by bill, on the part of the state Legislature must be held to be a sufficient expression of the legislative will, unless Congress itself challenges the method or manner of its adoption. It is upon this principle that the Supreme Court of the United States has held that the question whether the referendum does violence to the Constitution of the United States is nonjusticiable, holding that the question whether it deprives the government of a state of its representative character, thus violating the guaranty of a republican form of government, is a question for Congress, and not for the courts."

Homicide—Manslaughter—Reckless Driving of Automobile.—In Held *v.* Commonwealth, 208 S. W. 772, the Court of Appeals of Kentucky affirmed a conviction of manslaughter of the accused whose

alleged reckless driving of an automobile resulted in the death of a pedestrian.

The court said: "This is the first case that has reached this court, involving criminal liability for homicide resulting from the operation of an automobile, but the principles of law involved are thoroughly settled in this jurisdiction, and there can be no doubt that under the decisions of this court, carelessness or negligence or recklessness in the performance of a lawful act, which results in the death of another, is always unlawful and criminal if the agency employed was at the time and place of a character that its negligent or reckless use was necessarily dangerous to human life or limb or property; and this dangerous character of the agency employed has been accepted in this state, in a long line of decisions, as sufficient to render a reckless or negligent or careless use criminal, upon the theory, no doubt, that a want of ordinary care in the use of such an instrumentality in the presence of others or upon a crowded thoroughfare in a city, or where others were naturally expected to be, is gross negligence, and it is quite apparent that such a position is logically correct, for there are many instrumentalities of death with reference to which a want of ordinary care in proximity to others is carelessness of the grossest kind. So while it may be conceded that at common law culpable negligence in a criminal prosecution had to be of the quality known as gross negligence, and it is true no doubt that any negligence less than gross negligence in the performance of a lawful act would be insufficient to make of an unintentional killing the offense of involuntary manslaughter (see notes to 90 Am. St. Rep. 571; 30 L. R. A. [N. S.], 458; 33 L. R. A. [N. S.], 408; and 135 Am. St. Rep. 293), but it is not at all necessary that to attain this result it is necessary in all cases to refer to the culpable carelessness or negligence as gross negligence, because where in an instruction the agency and circumstances surrounding the homicide are described, the same result is obtained by treating as culpable the careless use of a necessarily dangerous instrumentality in a public place or in such close proximity of others as to endanger their lives. So we find in the case of York *v.* Commonwealth, 82 Ky. 361, it was held, as a matter of law, that an unintentional killing, which resulted from the careless pointing of a loaded and cocked shotgun at another, was at the least voluntary manslaughter, and that upon such evidence there was no evidence whatever upon which to base an involuntary manslaughter charge.

"In Chrystal *v.* Commonwealth, 9 Bush, 669, this court quoted with approval from 2 Wharton American Criminal Law, sec. 1004:

'Whatever may be the difference as to the degrees of homicide, a party whose negligence causes the death of another is in like manner responsible, whether the business in which he was engaged was legal or illegal. * * * But even where the business is perfectly

legal, negligence in the discharge of it when producing homicide is manslaughter.'

"But suggested as a necessary qualification thereof:

'To this general rule there may be exceptions, as where an act, careless in itself, is committed with fatal results under circumstances or at a place from which it might be reasonably inferred that no injury could happen from the carelessness of the party acting. But this is not of that exceptional class of cases; and, considering the instruction complained of, as we must, with reference to its application to the facts, we must conclude that the court did not err in giving it to the jury.'

"In that case, the court approved an instruction upon voluntary manslaughter based upon the 'recklessly careless' use of a loaded pistol in a room where others were present, and affirmed a conviction thereunder carrying with it confinement in the penitentiary, from which it is clear that if a 'recklessly careless' use of a loaded pistol amounts to voluntary manslaughter, a want of ordinary care in its use in the presence of others liable to kill, and which does kill, would necessarily be involuntary manslaughter. See, also, to the same effect, Sparks *v.* Commonwealth, 3 Bush, 111, 96 Am. Dec. 196; Smith *v.* Commonwealth, 93 Ky. 320, 20 S. W. 229, 14 Ky. Law Rep. 260. * * *

"A want of ordinary care in the operation of an automobile within the business district of a city near the noon hour, where the presence of others upon the highway must be anticipated, is such use of an agency dangerous to life, limb, and property of others as makes any negligence which results in the death of another unlawful and criminal."

Husband and Wife—Necessaries—Rooms and Board at Seashore Hotel.—In Stevens *v.* Hush, 176 N. Y. 602, the Supreme Court of New York held that a wife's contract, in advance, for a suite of rooms and private bath, with board, at a seashore hotel, for the fixed period of the summer season, is not, as a matter of law, a contract for necessaries.

The court said: "There is no general presumption at law, growing out of the marital relation, that the wife is authorized to act for the husband. At common law the husband is charged with the duty and burden of supporting his wife and family, and, where the husband and wife are living together, parties dealing with the wife for necessaries, knowing this, are entitled and bound to assume that the proposed contract is on the husband's obligation alone, who may, however, show as matter of defense that he has supplied the necessaries, either in kind or in money wherewith to buy them; otherwise, he is liable, and the fact that the wife had not been author-